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## THE LIMITATION OF STATE CONTROL OVER THE REGULATION OF RATES

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The powers delegated by the Constitution to the Federal Government are few and well defined, while those powers pertaining to state governments are numerous and indefinite. The commerce clause of the Federal Constitution is one of those defined powers of such wide scope that it is declared to be the most important conducive factor toward modern nationalism possessed by the Federal Government. Under this clause the actual extent of power, relative to domestic and foreign commerce, reserved to the several states, has not been fully determined, or not comprehended; and the interfering and unneighborly legislative regulations of some states have given cause for complaint by other states, which unsatisfactory condition apparently was contrary to the spirit of this Union. Legislative acts of a particular state enacted for the benefit of the people cannot have great opposition by the Federal Government unless such acts amount to an ambitious encroachment on the Federal authority. Whenever these acts of the legislature or state railroad commission are so general and so far reaching in their effect that there can be no doubt that they unreasonably affect the interstate commerce of the public corporations, they are, consequently, void.

The regulation of commerce is not a modern proposition but one that was comprehended in the infancy of this government relative to its great importance and necessity, and which was actually experienced under the Articles of Confederation as a deplorable deficiency to systematize commercial relations of the various states. The absence of this power of regulation and the general dissatisfaction in commercial affairs between the states were acknowledged by all the enlightened statesmen of that period who realized that the interests of trade and finance demanded Federal superintendence. (*Bancroft's History of United States*, Vol. 1, pages 84, 240.) This primary and political object, apparently a tremendous power, was one great concern of the government which involved the life of the nation. Some states represented at the Convention did not want a federal regulation of

commerce for fear of an abuse of power, but the paramount purpose beyond dispute was the laying a foundation of a great empire that their views should be permanent and not for the present moment only. (*Elliott's Debates*, Vol. 1.) It was declared by the delegates assembled in convention that the power of the United States to regulate trade should comprise the supreme control of interference with state regulations so that no danger would be apprehended from concurrent jurisdiction, which idea well expressed the intention of the debaters after due consideration. In this Convention Mr. Randolph submitted a resolution outlining the commercial power of the National Government, emphasizing the fact that the Federal Government should legislate on all cases in which the separate states are incompetent, or in which the harmony of the United States may be interrupted by the action of individual state legislation. This item of the commerce clause of comparatively few words was immensely broad in meaning and conveyed great power to the Federal Government, thereby limiting the regulation of trade by states with the result that this formation of the adopted clause was a complete change of affairs in the whole system of government. (*Bancroft's History of United States*, Vol. 7, p. 143.)

The power to regulate commerce embraces a vast field, containing not only many, but exceedingly various subjects, quite unlike in their nature; some imperatively demanding a single uniform rule, operating equally on the commerce of the United States in every port. Either absolutely to affirm or deny that the nature of this power requires exclusive legislation by Congress, is to lose sight of the nature of the subject of this power, and assert concerning all of them, what is really applicable to a part. Whatever subjects of this power are in their nature material, or admit only of one uniform system, or plan of regulation, may justly be said to be of such a nature as to require exclusive legislation by Congress. Over domestic commerce, situated wholly within its jurisdiction, a state has exclusive governmental control except when such instrumentality is employed in interstate commerce; therefore, Congress has nothing to do with the purely internal commerce of the states, that is to say, with such commerce as is carried on between different parts of the same state, if its operations are confined exclusively to the jurisdiction and territory of that state, and do not affect other nations, or states, or the Indian tribes. (102 U. S., 541.) This regulation for all purposes may

be assumed by the state until Congress acts in reference to their interstate relations, and when Congress acts the state laws are superseded only to the extent that they affect interstate relations of the instrumentality. (95 U. S., 485.)

The exact extent of powers may not be defined or ascertained to a positive degree of certainty but, nevertheless, the bounds of limitation are mostly marked by brands of sufficient broadness and clearness. The power to regulate prescribes the rules to govern commerce, and Chief Justice Marshall said: "That the power to regulate, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent and acknowledges no limitations other than those prescribed in the Constitution." *Gibbons v. Ogden*, 9 Wheat, (U. S.) 1. Congress possesses all the powers which existed in the states before the adoption of the National Constitution and which have always existed in the Parliament of England. *Gilman v. Phila.*, 3 Wall (U. S.) 713. In the complex system of government which prevails in this country, the powers of the government relative to commerce may be divided into four classes, namely, those which belong exclusively to the states; those which belong exclusively to the National Government; those which may be exercised concurrently and indefinitely by both State and Federal Governments; those which may be exercised by the states, but only until Congress shall see fit to act upon the subject. 13 Wall (U. S.) 236. The power to regulate commerce based on the nature of the particular subject and consideration of its character would place it in the first, second, or fourth class.

Great credit and praise are given to Mr. Justice Marshall for his vigorous opinion rejecting an application for a restriction of the Commerce Clause which was adopted for the paramount purpose of uniting the great wealth and power of the States. This unionism was designed for the precise intention of protecting the humblest individual, whose rights, civil and political, his interests and prosperity constituted the single goal. This abstract right of commercial intercourse, which is common to all the citizens of all States, should be free from invidious and partial restraint.

In the concurring opinion Mr. Justice Johnson, though seldom read, said that not only the subjects and vehicles of commerce but all the agencies and their operations become the objects of commercial regulation. Also that the power to prescribe the limits of its freedom, necessarily implies the power to determine what

shall remain unrestricted, it follows, that the power must be exclusive; it can reside only in one potentate, and hence the grant of power carries with it the whole subject, leaving nothing for the States to act upon. Unless the vital agents of commercial prosperity could be controlled the nation would not possess power to regulate commerce. *Gibbons v. Ogden*, 9 Wheat. (U. S.) 230-242. Further he said that it is not for the States to legislate or even to interfere with the power of Congress or attempt to show just how far Congress can regulate commerce. The practice of our government certainly has been, on many subjects, to occupy so much of the field opened to them as they think the public interest requires, therefore, all those aboriginal powers of the States once theirs are now out of their reach by the bringing into existence the Federal Constitution. He seems to have had a remarkably keen perception of future commercial conditions and vaguely realize that a century hence would present intricate questions for judicial decision.

This liberal grant of power to Congress is a limitation on the powers of the states to legislate with respect thereto, and the duty rests upon the courts to see that such commerce is kept free from burdensome state regulations; and in so doing the courts have said that a certain rate or fixed charge is unjust and unreasonable even to the extent of nullifying a state regulation. But let it be understood that we do not contend but what cases may arise and have arisen many times in which it will be found that the state has, occasionally, in regulating her own internal commerce encroached upon the domain of Congress. Such encroachment or invasion is not to be tolerated any more than is the invasion on the part of the Federal judiciary to be tolerated when it encroaches upon the rights of the state in matters pertaining purely to the state. *Granger cases*, 94 U. S.

Rates and fares of transportation of passengers and freight in interstate commerce are national in character and believed to be susceptible of regulation by uniform rules. The silence or inaction of Congress relative to rate and fare regulation is a conclusive indication that it intends that the interstate commerce shall be free so far as the Congress has not directly regulated it. 114 U. S., 622-631, *Bowman v. Chicago R. R. Co.* 125 U. S., 465, 485; *Wabash, etc., St. L. & P. R. Co. v. Illinois*, 118 U. S., 557, 570. If the plenary powers of the nation to protect the freedom of, and regulate interstate commerce, and the attempted exercise of a state

by its powers to regulate intrastate commerce, to the attempted exercise of its other powers, impinge or conflict, the former must prevail and the latter must give way, because the Constitution and the acts of Congress passed in pursuance thereof are the supreme law of the land, and that which is not supreme must yield to that which is supreme. *Brown v. Maryland*, 12 Wheat., (U. S.), 419; *Gibbons v. Ogden*, 9 Wheat., 1209; *Covington Bridge Co., v. Kentucky*, 154 U. S., 204; *C. C. C. & St. L. R. Co., v. Illinois*, 177 U. S., 514; *A. C. L. v. Wharton*, 207 U. S., 328.

Again a comprehensive statement of the rule as to subjects upon which the state cannot legislate is presented in *Cooley v. Board of Wardens*, 12 How. (U. S.) 299; when the court said that the grant of commercial power to Congress does not contain any terms which expressly exclude the states from exercising an authority over its subject matter; if they are excluded it must be because the nature of the power thus granted to Congress requires that a similar authority should not exist in the states. Thus a part of every interstate transportation is carried on within the state of its initiation and concludes within another state, but neither state may fix or regulate the fares, or rates, of a part within its borders, because the authority to do so is requisite to the complete preservation of the freedom of, and to the untrammelled regulation of that transportation, and this power is vested exclusively in the nation. *Wabash R. R. Co. v. Illinois*, 118 U. S. 557. We have a dual system of regulations and just at this moment the twilight zone between State and Federal authority is maintained to be the haven for certain enterprises, but the scope of authority seems to be hazed as to which is in supreme command.

During the recent years Congress has legislated relative to commerce and especially to the regulation of rates and fares charged by carriers for transportation. The courts have passed judgment on nearly all principles of commerce affected in the various phases, yet considerable interest has been shown in the recent rate decisions. A conference was held by the governors of the various states recently and in discussion all seemed to be of the same opinion on this subject for the defence of state rights and strongly opposed to the usurpation of powers by public corporations that have millions invested and are exerting every nerve string to obtain a fair return of profits for their investments. In the midst of this crusade of the governors upon commerce the railroads are guarding the life blood for the stockholders.

Upon a moment's reflection it will be remembered that numerous early decisions providing regulation for the people within a state though it may indirectly affect those without have been overruled by the more recent decisions. Again the laws of the state, or actions of a railroad commission, relating to its intrastate commerce which by their necessity, or natural, or probable operation have the effect substantially to burden interstate commerce are beyond its powers, violative of the commerce clause of the Constitution, and void. Of this character or class are those statutes requiring carriers engaged in interstate commerce to give all persons upon their public conveyances equal rights and privileges in all parts of those conveyances without discrimination or distinction on account of race or color, 95 U. S., 485; prohibiting a higher rate for a short haul entirely within the state than that charged for a longer interstate haul, 118 U. S., 573; prescribing tolls for the use of a bridge across a river between two states, 154 U. S., 204; requiring a railroad company engaged in interstate commerce to furnish an unreasonable number of cars to shippers upon demand, 201 U. S., 321; requiring a railroad company to stop its through fast trains at a specified station in the state, 207 U. S., 328.

No logical person will deny that the states have supreme power to prescribe terms under which foreign corporations may transact business within their confines, subject to constitutional limitations; and states may enact and enforce laws prescribing reasonable fares and rates for, and otherwise regulate its intrastate commerce although the operation of such laws remotely, or indirectly effect interstate commerce such as the statutes regulating elevator charges, *Minn. v. Ill.*, 94 U. S., 113; prohibiting the operation of trains on Sunday, requiring the stopping of trains at stations, 173 U. S., 285; protecting diseased cattle by means of reasonable inspection laws, 209 U. S., 251; requiring locomotive engineers to be examined and licensed, 124 U. S., 165; regulating the heating of passenger cars and directing guards and guard posts to be placed at railroad bridges and trestles and approaches thereto. 165 U. S., 628.

This question as to the right of the state to regulate within its boundaries the rates of transportation of railroad companies engaged in interstate commerce has been dealt with in the recent *Minnesota Rate cases*, wherein the court puts special stress on the effect of state regulation upon interstate commerce. This case involved the reasonableness and constitutionality of the orders of

the board of railroad commissioners which attempted to establish maximum rates for passenger and freight transportation. These cases were referred to a special master whose findings were confirmed. In the defence of the state right and superior power to dictate rates and fares for intrastate transportation there are many persons who contend that the decision handed down by the learned judge is an error in that such orders of a railroad commission are in the least degree burdensome upon interstate commerce; and if the decision is upheld then this element known as state sovereignty in a degree would soon be a matter of nonexistence, and the states shorn of this power would never see daylight again in the regulation of the passenger and freight rates. Apparently no thought or regard is given by the governors to the effect of intrastate traffic regulations on interstate commerce of the states, but rather regarding themselves as a sort of absolute monarchy within their geographical limits answerable to no one and assuming an attitude of defiance to all those who refuse to kindly bow at their thrones. But in the face of this arrogant rule and defiance the people turn to the judiciary for an equal protection of what they regard their rights in matters of transportation.

The disastrous effect of state legislation determines, whether or not, the orders of the railroad commissions substantially burden interstate commerce and violate the commerce clause of the Constitution. This is a judicial question which each court must determine on the special facts of each particular case and in which conclusion the court must obey the Constitution rather than the legislative branch of government. 136 U. S., 313; 184 U. S., 27; 216 U. S., 146. Even though a power exerted by a state, when inherently considered, may not in and of itself abstractly impose a direct burden on interstate commerce, nevertheless, such exertion will be a direct burden of such commerce if the power as exercised operates a discrimination against that commerce, or, what is equivalent thereto, discriminates against the right to carry it on. 216 U. S., 65. Also in considering the effect of similar statutes, Justice Harlan said that according to well settled rules of statutory construction, the validity of a statute, whatever its language, must be determined by its effect of operation, as manifested by the natural and reasonable meaning of the words employed. 216 U. S., 162. If a statute by its necessary operation really and substantially burdens the interstate commerce of a foreign corporation seeking to do business in a state, or imposes a tax on its prop-



erty outside of such state, then it is unconstitutional and void, although the state legislature may not have intended to enact an invalid statute. 92 U. S., 259.

It is obvious that the opinion of Mr. Justice Brewer in *Smythe v. Ames*, 169 U. S., has been avoided by the court in the *Minnesota Rate case* because the facts presented were condemnatory while no such condemnatory facts were presented to Justice Brewer in that case, and doubtless, no case has been found in the books in which any such proof of the unavoidable effect of general reduction of intrastate rates to substantially burden and directly regulate interstate commerce has ever been presented. Although the Court held that a state statute fixing maximum rates for all the railroads of the State of Nebraska as to all classes and commodities was within the power of the State; and in *Reagan v. Farmers' Loan & Trust Co.*, 154 U. S., 362, and *Chicago, etc., R. Co. v. Tompkins*, 176 U. S., 167, the courts assumed that the State had not trespassed upon the jurisdiction of Congress in making complete schedules of intrastate rates for interstate carriers. Such condemnatory facts of convincing evidence to burden interstate commerce were never presented nor was the validity of state regulation of rates affecting interstate commerce ever at issue.

A state railroad rate statute which imposes such excessive penalties that parties affected are deterred from testing its validity in the courts denies the carrier the equal protection of the law without regard to the question of insufficiency of the rate prescribed; it is within the jurisdiction, and is the duty, of the Court to inquire whether such rates are so low as to be confiscatory, and if so to enjoin at the suit by one of its stockholders from putting them in force, and it has power pending such inquiry to grant a temporary injunction to the same effect. While injunction against the enforcement of a state rate statute should not be granted by a Federal Court except in a case reasonably free from doubt, the equity jurisdiction of the Federal Court has been constantly exercised for such purposes. Whether or not a rate is confiscatory is purely a judicial question and when such questions arise all the rules of law, equity and practice are included to ascertain the effect of this law.

The first section of the act to regulate interstate commerce contains this provision: "Provided, however, that the provisions of this act shall not apply to the transportation of passengers or prop-

erty, or to the receiving, storage or handling of property wholly within one state or territory as aforesaid." This provision was inserted in the act out of an abundance of action to make sure that the broad terms of the act did not go beyond the constitutional power of Congress and directly regulate intrastate commerce more than adequately necessary to regulate interstate commerce.

Thus the act of Congress prohibits, and when the orders of a state railroad commission compels a rate reduction the result must be a discrimination between localities under the penalty of the surrender by the companies of a substantial portion of their interstate commerce or of the revenue derived therefrom. These broad terms of prohibition against discrimination compel the conclusion that Congress intended to exercise its constitutional power to prevent discrimination to the utmost between localities.

If this is a measure of vital importance to the states to reduce intrastate rates for transportation, it may be in order to inquire why the rates for transportation to points within one state should be so much lower than to localities across the border in another state which are hampered and discriminated against in commercial affairs and in the interstate business of the carrier. When the railroad companies have schedules prescribing fixed relations between rates for different distances and different classes that relation of rates must be adhered to beyond the state line and it cannot be departed from materially without involving undue and unjust discrimination to those shippers on the state line. If conditions are substantially the same, rates for like distances should be the same, and if not the same undue and unjust discrimination in fact will exist, and a comparison of the rates involved will determine whether or not discrimination exists. For illustration of reduction by state authority the rate on soft coal from Duluth, Minn., to Walhpeton, N. D., is \$2 per ton, prescribed by the schedule of the carriers, but the act of the state railroad commission fixed the rate from Duluth, Minn., to Breckenridge, Minn., at \$1.31 per ton, and prescribes that a minimum carload of soft coal shall be 30,000 pounds, or 15 tons. Thus the reduction necessary to avoid discrimination against the interstate locality in the rate on soft coal will be \$10.35 per minimum carload. Such a schedule of rate will silence all free competition from the various distributing points and calm the carriers rendering service. Again in passenger rates that are fixed by the state commission prescribing a

minimum of 2 cents per mile for transportation of passengers wholly within the state while the carriers schedule charged 3 cents per mile would make a discrimination against the interstate commerce passengers who purchase through tickets against the passengers who have access to the sum of the locals. It may be the intention of state commissions that by reducing the intrastate rate a reduction of interstate rates would be the inevitable and logical result. Reduce these local, or intrastate rates for internal commerce, then the interstate commerce rates across the borders of the state will be substantially higher than the sum of the locals, or to points to that particular portion within the state even to the very boundaries and the interstate commerce business will immediately be harassed to the extent that the interstate commerce rates would be reduced to the sum of locals which the carriers could not by any device avoid under the interstate commerce acts to regulate commerce.

If the carriers refused to reduce the interstate commerce rates to an equality of the local rates for the same distance and conditions, and complaint is made by the shippers to the Interstate Commerce Commission for a reduction based on the sum of the locals, the carriers may be compelled to abide by the adverse order of that Commission. Such action may and no doubt would work a hardship upon the carriers and result in a great burden upon interstate commerce. Against this probable reduction of rates on interstate commerce the aggressive parties maintain that this undue difference between intrastate and interstate rate discrimination neither the state, or nation has any power. But here, likewise, the predominance of Federal control will demonstrate itself.

The establishment of intrastate rates by the state commission is based upon present conditions within its territorial limits taking into consideration the value of the property, the population, industrial development, and all other things which might be a factor in fixing the intrastate rate regardless of existing conditions just over the border in another state. But new developments may cause the courts to consider immediate controlling factors of other states in the regulation of internal rates. The state may regulate its intrastate commerce so far only as the exercise of its power does not substantially burden or regulate against interstate commerce, *but no farther*. A state may not prohibit or regulate discrimination between intrastate and interstate rates in such a way as substantially to burden or regulate interstate commerce, as,

for instance, by the prohibition of a higher charge for a short haul wholly within the state than for a long haul that includes the short haul and extends into another state, 148 U. S., 27. The inference would be that a state has no authority to suppress a discrimination much less has it the power to create and maintain or to prohibit it. The power to prohibit, or prevent, undue discrimination between localities is vested in Congress and all the orders or acts of state officers are of no avail. 12 Wheat. 419; 9 Wheat. 209; 158 U. S., 98; 167 U. S., 633; 96 U. S., 1; 125 U. S., 465; 135 U. S., 161; 136 U. S., 114; 141 U. S., 47; 187 U. S., 662.

In aiming at the real value of the property it is just to say that the present value of the property should be the basis by which the test of reasonableness of compensation is to be determined, although the actual cost and the value of service rendered should be considered. This measure of value of real estate is its market value for its most available use. What the company is entitled to demand in order that it may have a just compensation is a fair return upon the value of the property at the time it is being used for the public. 169 U. S., 547; 174 U. S., 757; 189 U. S., 442; 212 U. S., 19, 41.

Capitalization is founded on the worth of use and not on mere use. The value of property and of investment in every form is measured by the value of its use, not by its use divorced from the value thereof. Railroad companies and all rate makers base their rates primarily on the worth of the use of the railroad machines by the various classes of freight and passengers and not on the amount of the use. In this respect the use of railroad property to haul first class merchandise is worth more than the use to haul merchandise of E class. When no regard is given to the value of uses it is impossible to proportion or measure the relation between various uses of property.

Many cases before the courts and Interstate Commerce Commission have demonstrated beyond the fraction of a doubt that a long haul is far more profitable than a short haul, and that it costs from three to seven times more to earn a dollar in the latter when compared to the former character of business. The assertion that the rates in actual practice are not made on the basis of cost and service of railroad property, but rather fixed upon an unfair and deceptive scheme to keep them sufficiently high as not to permit freight from being shipped can be regarded as fallacious.

All shippers and carriers who have ample knowledge of transportation affairs are aware that the rates and fares and traffic in interstate commerce are so inextricably interwoven with the rates and fares of intrastate commerce that a reduction in one would necessarily compel a reduction in the other. The operation of a state reduction would act as a burden upon interstate commerce and the result would be grievously unavoidable in face of the interstate commerce act which emphatically declares that all passengers and freight must move at the lowest available rates to points in the same vicinity. A regulation made under the authority of state enactment establishing rates for transportation by railroad that will not admit of the carrier earning such compensation as under all the circumstances is just to it and the public, would deprive such carriers of its property without due process of law and deny to it the equal protection of the laws and would therefore be repugnant to the fourteenth amendment of the Constitution of the United States.

This power of the legislature to regulate is not a power to destroy, and limitation is not equivalent to confiscation and under pretense of regulation the state cannot require the railroad corporation to carry freight and passengers without reward; neither can it do that which amounts in law to taking of private property for public use without just compensation, or without due process of law. *R. R. Commission cases*, 116 U. S. The lowest rate the legislature may establish must be such as will secure to the owners of the railroad property a profit on their investment, at least, equal to the legal rate of interest. The court in clear cases might not hesitate to arrest the operation of a confiscatory law, *Knoxville Water case*, 213 U. S., 18.

If a state commission being a quasi judicial body created to perform duties involving inquiry into facts and the application of the law thereto, schedule certain fixed rates, their action is subject to review by the courts; 96 U. S., 530. The determination of the commission does not and cannot preclude judicial inquiry into the question and the reasonableness of rates within the meaning of the constitutional guaranty. Neither Congress nor any legislative nor administrative board is justified to establish rates that will not yield just and reasonable compensation to the carrier. Proper consideration must be given to the cost and value of the service and when property is clothed with a public interest the rate limit must be reasonable.

This virtual elimination of state commissions from control is foreshadowed in the opinion by the Supreme Court of the United States in the *Interstate Commerce Commission v. Southern Railway Company* relative to application of the Federal safety appliance act. The point at issue was whether the Federal act applied in the case of a shipment from one point in Alabama to another point in the same state, the shipment being in an improperly equipped car. The court said through Justice Van Devanter that railroads which are highways for both interstate and intrastate commerce, both classes of traffic are at times carried in the same car and cars are frequently commingled in the same train. Cars are seldom set apart for exclusive use in moving either class of freight but generally are used interchangeably for both classes of traffic. The safety appliance act and the *Minnesota Rate case* would appear to have no connecting link in origin or intent, but the principle involved, the issue between the government and the States as to what constitutes interstate traffic, practically is the same in both cases. This ruling was unanimous and it will have its bearing on the litigation of state regulation over rates in intrastate traffic whether this is such an interference as to amount to a burden on interstate commerce when this important *Minnesota Rate case* will be reviewed by the Supreme Court. This sweeping decision is another step toward modern nationalism and it indicates that the Federal Government intends to exercise its full power in such matters of interstate commerce. The time is close at hand when the Supreme Court of the United States will announce that an interstate carrier cannot be controlled by a state commission that permits people within its confines to enjoy greater advantages in commerce than the people outside in another neighboring state are able to obtain. The effect of Justice Sanborn's decision is to put all traffic within a state which discriminates against points outside the state on the same basis as through shipments.

No one can criticise the legal ability and logic displayed in the *Minnesota Rate* decision. It is heavier than the majority of people conceive. Legislation that favors the greatest good and benefits the greatest number should be the universal rule. The commerce clause in the Constitution was enacted by able men of that time only after the subject was carefully debated, during which time complexing propositions and amendments were advanced and defended until it became a measure that they regarded sufficient to

regulate and subsidize any future question of importance. Should the justices of the Supreme Court in secret deliberation assume a legislative attitude similar to recent decisions and declare against the expressed and implied authority of the Constitution this mighty question of transportation may be completely confused, restrained, and thwarted by unlimited state control, resulting in irreparable injury and immeasurable damages to the nation at large.

No one will attempt to argue that rates are satisfactory at the present day, as a matter of fact, the regulation of rates by states and nation are very unsatisfactory. The growth and development of transportation rates has become almost a national regulation necessitated by great advances and methods introduced by great transportation companies who are alert to the difficulties encountered by individual state regulation over the entire country, that they are determined to meet the drift of public opinion, legislative activity, and commercial sagacity, anticipating that judicial interpretation will result in obliterating state power and establishing a single rate making power which alone shall supervise commerce. Should not the present predicament be adjusted or at least a substantial change in existing conditions be reached, it is evident that commercial and industrial interests will soon find themselves among the vanquished rather than victors in competitive commercial enterprises.

Public sentiment favors state limitations and in like manner it disapproves the unreasonable charges made against Federal courts and able lawyers for adhering to the Constitution. The judiciary is fearless, who, for many years have hewn close to the line and kept faith in the Constitution which they have bound themselves to obey, and perform the duties incumbent upon them without regard or respect to the rich or the poor. When the case comes before the Supreme Court of the United States the decision will not be *obiter dicta* as the decision in the *Monopoly cases* was generally labeled by the legal ability of the country, and which was invested with the brand of judicial legislation. The Constitution of the United States and all decisions of the Federal courts are binding upon all Federal judges according to our system of jurisprudence although no statute has been enacted or announcement made in any decision.

To defeat the right of the states to establish rates for transportation within their limits would curtail their powers only in so far

as the regulations of the state do not affect general interstate transportation; and all those matters not affected within its boundaries will remain purely internal commerce of the state. As the answer to this question is not enumerated in the Constitution, nevertheless it undoubtedly is included in the expressed powers conferred by sanction of the states to the National Government. This whole subject of rates and fares in commerce over the entire country is national in character and capable of uniform rates. The governors acting upon the axiom "in union there is strength," have contrived a uniform scheme of procedure by which they contemplate to rush forward in full legal array and intimidate the Supreme Court of the United States to delineate its actions in the interpretation of the interstate commerce clause. A committee of ways and means has been appointed whose duty will be to impress and convince this great court that the sovereignty of states is supreme in power and whose commands must be obeyed. These governors, who boast marvelous deeds as a body, have no standing before this august tribunal and indeed wise men they are if they foresee the ultimatum.

It has been declared that rate adjustment is a duty belonging to the judiciary who will apply legal principles in the same manner to the same cases, thereby eventually creating a definite rule of regulation. At present the judiciary have broken the trail which soon will develop into a hard beaten thoroughfare. This question now awaits final determination by the highest judiciary in the land to mark distinctly its extent and limitations, which decision will elevate the dignity of the individual states contrary to public opinion and insistency, or sustain the national government to promote and secure transcontinental and universal transportation.

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